
(2002) 09 AHC CK 0225
In the Allahabad High Court
Case No : Civil Revision No. 92 of 2002

United Service Club and Another	Vs	APPELLANT
Km. Amita Barlow and Others		RESPONDENT

Date of Decision : 16-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 4, Order 38 Rule 5 , 115

Citation : (2002) 5 AWC 3557 : (2002) 93 RD 614

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : P.K. Srivasava, for the Respondent

Final Decision : Allowed

Judgement

B.K. Rathi, J.—The Civil Judge (Junior Division), Kanpur Nagar passed an order on 26.7.2002 in Misc. Case No. 9/74 of 2000. The suit giving rise to the misc. case was valued at Rs. 450 only. Undisputedly, this revision challenging the aforesaid order, would not have been maintainable before the High Court and would be maintainable before the District Judge before Code of CPC Amendment Act (Central Act 22 of 2002).

2. In fact, it was originally filed before the District Judge who refused to entertain it in view of the said amendment by an almost non-speaking order dated 24.8.2002. It would have been appreciated if the learned District Judge, while dealing with such a vital question of law of general importance, would have been more lucid and given a minimum of reasons in support of the view taken by him.

3. Therefore, now this revision has been filed here. The learned Counsel for the revisionist does not challenge the view taken by the District Judge, but the Stamp Reporter of the High Court has, in his report, raised the objection that the revision is not maintainable here and is maintainable before the District Judge. In view of this objection, it has become necessary to examine the post-2002 amendment legal position regarding Section 115, Code of Code of Civil Procedure

4. It may be mentioned here that the view taken by the learned District Judge, Kanpur Nagar in interpreting Section 16(1) of the Code of CPC (Amendment) Act (22 of 2002), the same view as was taken by this Court in Tungal Ram Vs. Smt. Leelawati, and Jupiter Chit Fund (Pvt.) Ltd. Vs. Dwarka Diesh Dayal and Others,

5. In Section 115 of the Code of CPC as enacted and amended from time to time by the Central Legislature, the power of revision was conferred only on the High Court. The District Judge had no power of revision. Realizing the avoidable pressure being caused upon the High Court, the Uttar Pradesh Legislature by State amendments to Section 115, Code of CPC conferred the power of revision upon the District Judges also against the orders passed in suits below a certain valuation. Such amendments were made in the years 1970, 1972 and 1973. After the Central Amendment Act No. 104 of 1976, it became necessary for the Uttar Pradesh Legislature to intervene again by U.P. Act No. 31 of 1978 to re-confer the revisional powers upon the District Judges.

6. Immediately before the enforcement of Central Amendment Act 22 of 2002, in this State of Uttar Pradesh, Revisions arising out of suits upto the valuation of Rs. one lakh lay before the District Judge in view of the U.P. Act No. 31 of 1978. The revisions from suits of higher valuation lay before the High Court. By the Central Act 22 of 2002, no amendment has been made to Section 115 of the "Principal Act" but Section 16(1) of the said Act is as follows:

16. Repeals and savings.-(1) Any amendment made, or any provision inserted in the Principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions are consistent with the Principal Act as amended by this Act, stand repealed.

7. "Principal Act" according to Section 2 of the Act No. 22 of 2002 means the Code of Civil Procedure, 1908.

8. Two questions arise. First whether the non-amendment of Section 115, Code of CPC by the Central Act 22 of 2002 would leave the U.P. Amendment of 1978 intact and second whether the amendment of Section 115, Code of CPC by U.P. Act No. 31 of 1978 is consistent with Section 115, Code of CPC as contained in the Central Act. So far as the first question above is concerned, it stands answered by the decision of the Supreme Court in the case of Ganpat Giri Vs. Second Additional District Judge, Ballia and Others, and it must be held that the fact that the Amendment Act No. 22 of 2002 has not amended Section 115, Code of CPC is irrelevant. So far as the second question above is concerned, it also stands covered by the decisions in the cases Tungal Ram and Jupiter Chit Fund (supra) and it cannot be said that the U.P. Amendment of 1978 to Section 115, Code of CPC is consistent with the "Principal Act".

9. Therefore, the amendment to Section 115, Code of CPC as done by U.P. Amendment Act No. 31 of 1978 stands repealed by the Central Act No. 22 of 2002 and consequently, revisions would now lie only to the High Court. A copy of this order be placed within three days before the Stamp Reporter and be faxed

(or otherwise sent) to all District Judges by the Registrar General so as to reach them within a week. Compliance report be submitted on the order sheet of this case immediately after a week.

10. List this revision for admission/hearing in the next cause list.

11. Since in this case, the learned Counsel had not challenged the view of the District Judge, therefore, for considering the Stamp Reporter's objection, I had to go through the complete Code of CPC along with the Amending Acts No. 46 of 1999 and No. 22 of 2002 on my own. While examining the said Acts, I found a large number of anomalies or discrepancies, which I consider it necessary to place on record for consideration by the State Legislature/ Central Legislature/ Law Commission of the State/Centre. It would prima facie appear that there has been some over-anxiety for speeding up of adjudication process of the suits and some of the vital consequences have been overlooked in this anxiety. These are discussed below considering the law before the 2002 amendment, the law after the 2002 amendment by Acts No. 46 of 1999 and 22 of 2002 (both enforced from 1.7.2002), and the consequences of the change.

12. Section 2 of the 2002 Act adds Clause (4) to Section 39 of the "Principal Act" which is as follows:

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

13. This does not take into consideration the cases where execution is in respect of immovable property part of which is located within and part outside the local limits of the jurisdiction of the executing court. It would be very unreasonable that though the Court has territorial jurisdiction to try the suit u/s 17, C.P.C., but it has no jurisdiction to execute the decree. It would have been desirable to draw wisdom from Section 17 of the "Principal Act" and should have adopted the same words.

14. By Section 3 of the Act No. 22 of 2002, the following Sub-section has been added to Section 64 of the "Principal Act":

(2) Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.

15. The original Section 64 provided that private alienation of property after attachment is void. The newly added Sub-section (2) opens an escape route for unscrupulous litigants. Attachment may be either before judgment or in execution after judgment. Even for attachment before judgment when an application with such prayer is moved. opportunity to furnish security under Order XXXVIII, Rule 5, Code of CPC is given before the order for attachment is passed. Thus, in both cases of attachment, the Defendant or judgment-debtor has prior knowledge of the impending order of attachment and attachment is to

take place and there is nothing to stop him from entering into registered agreement. Therefore, at least bona fides of the agreement should have been left open to be examined by the Court.

16. The mode of service of summons of suits prescribed by original Order V, Code of CPC contemplated service through a process server of the Court. Detailed procedure for such service was prescribed and the administrative control over the process server ensures that he did not give incorrect service reports. Even when it was directed by the Court to serve summons by registered post, the process server's procedure was left intact, and registered post was only a parallel (simultaneous) mode. After the amendment, there is ambiguity, and it appears that summons may now be issued by private courier service, in lieu of process server's procedure. The dangers in this are quite obvious, and irreparable loss can be caused by execution of ex parte decrees, as cases arise frequently where it is not possible to make complete restitution.

17. Section 12 of the Act 22 of 2002 introduces Rule 4 in Order XVIII, Code of CPC which is in direct conflict with Rule 5 of same order which has not been touched. According to Rule 5 in appealable cases, evidence is required to be recorded in the Court's language in writing by the Judge or in the presence and personal direction and superintendence of the Judge or on the dictation of the Judge. Rule 4 provides for taking of evidence (examination in-chief) on affidavit and cross-examination and re-examination by the Commissioner. This will cause serious problems for subordinate courts if the rival parties insist on adoption of the said Rule 4 and Rule 5 respectively. Further, if the trial court adopts the procedure introduced by Rule 4 for recording evidence, the appellate court may be required to remand the matter on the ground that procedure of Rule 5 has not been adopted. It may be pointed out that decrees in most of the suits are appealable (except Section 9 Specific Relief Act or S.C.C. suits).

18. The proviso to Section 115, C.P.C., as it stood before amendment, provided that interference in revision with an order made or any order deciding an issue could not be made unless if the order is varied or reversed would finally dispose of the suit or proceedings or if allowed to stand would occasion a failure of justice or cause irreparable injury. It appears that in the anxiety to do away with some of the revisions, Section 12 of the 1999 Amending Act has confined the interference in revision to cases where the varying or reversing of the impugned order would finally dispose of the suit or proceedings. It does not take into consideration cases where there would be a failure of justice or irreparable loss. To give an example, supposing the valuation of a suit were to be increased by the trial court, so as to require payment of huge additional court fee, it could be an order where the Plaintiff would stand not suited if he does not have requisite financial capacity to pay the additional court fee. In such circumstances, it is difficult to accept that the revisional court will have to be a mute spectator.

19. Similarly, the Amending Act of 1999 by Section 13 limits the powers of extension of time u/s 148, Code of CPC to maximum of thirty days. It does not

take into consideration that there may be genuine cases requiring much more time than thirty days. There appears to be no good reasons why the discretion of the Court to consider unforeseen circumstances should be taken away and put in a straitjacket. To give an example, a person has been required to deposit huge amount within a certain fixed time and before the expiry of the time, that person or a member of his family suffers a serious illness or accident requiring huge medical expenditure and continued treatment for more than a month. In such circumstances, it would be very hard on that innocent litigant to suffer the consequences just because there is no power on part of the Court to enlarge the time beyond thirty days.

20. Again amendment has been made to Order XLI, Rule 1, Code of CPC by the Amending Act of 1999 reversing earlier position and dispensing with the requirement of filing a copy of the decree appealed against. Now the requirement is merely of filing certified copy of the judgment with the memorandum of appeal. Appeal lies u/s 96 against the decree and not against the judgment. The full parties name and their address, the valuation, the Court fee payable, the limitation all these are calculated from the decree. These cannot be calculated from the judgment as most of the relevant particulars are not even contained in the certified copy of the judgment. In the circumstances, it is very impractical and unthoughtful amendment. If such amendment was being made, atleast, consequential amendments should have been made in Order XX, Code of CPC requiring the certified copy of the judgment to contain the relevant particulars, so that the necessary calculations and computation could be made while reporting and entertaining the appeal.

21. The Amending Act of 1999 by Section 31(ii) incorporates Rule 9 in Order XLI, Code of CPC which provides that the appeal will be filed in the trial court itself. There are no consequential amendments as to what the trial court is required to do with the appeal after the same is entertained by it. Further, the amendment does not take into account that in certain cases stay order may be required urgently and filing of the appeal in the trial court and its transmission by the trial court to the appellate court may take a lot of time thus denying to the litigant the right to apply for the stay order urgently and directly before the appellate court.

22. In the nut shell, the amendments appear to be drafted in a hurried manner without adequate thought to the consequences.

23. The Registrar General will, therefore, send a copy of this judgment to the Law Commission of Uttar Pradesh and the Law Commission of India for their consideration.